

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

FRANCIS ANTHONY GRANDINETTI, II,

Plaintiff,

vs.

5:07-CV-556

HON. NELSON ROCKEFELLER, et al.,

Defendants.

APPEARANCES:

OF COUNSEL:

Francis Anthony Grandinetti, II  
A-0185087  
CCA/SCC Saguaro Correctional Center  
PSD-SID Hawaii  
1250 East Arica Road  
N-C 0064-L Ship Seg  
Eloy, AZ 85231-9622  
*Plaintiff, Pro Se*

**Norman A. Mordue, Chief U.S. District Judge**

MEMORANDUM-DECISION AND ORDER

On September 16, 2008, after plaintiff repeatedly failed to follow orders and/or directives concerning prosecution of this matter, the Court adopted the Report and Recommendation of Magistrate Judge David E. Peebles which recommended dismissal of the action pursuant to Rule 41 of the Fed. R. Civ. P.. Notably, plaintiff had failed to file objections to said Report and Recommendation within the time period afforded by Fed. R. Civ. P. 6(a) and 28 U.S.C. § 636(b)(1). Moreover, plaintiff failed to file a notice of appeal concerning dismissal of his action within the legal time limit. Judgment was entered by the Clerk of the Court on September 16, 2008.

Presently before the Court are three motions. First, plaintiff requests an extension of time

within which to file objections to the Magistrate Judge's Report and Recommendation (Dkt No. 29). Secondly, plaintiff seeks an extension of time within which to file a notice of appeal of this Court's dismissal of his complaint (Dkt. No. 30). Finally, plaintiff has filed a third motion under Fed. R. Civ. P. 59(e) which the Clerk has docketed as a motion to "set aside judgment" (Dkt. No. 31).

The Court finds no grounds upon which to exercise its discretion and grant plaintiff an extension of time to file objections to the Report and Recommendation of Magistrate Judge Peebles. As referenced in Magistrate Judge Peebles well-reasoned Report and Recommendation, plaintiff was afforded multiple opportunities to comply with Court orders and directives and failed to do so. Plaintiff has provided no explanation or reasonable excuse for his failure to have filed objections in a timely fashion and did not even file the present request for an extension until three weeks after judgment was entered.

As for plaintiff's motion pursuant to Fed. R. Civ. P. 59(e), the Rule states that any such motion must be filed within ten (10) days after entry of judgment. Plaintiff's motion was not filed until seven weeks after judgment had been entered. Again, plaintiff provided no explanation or reasonable excuse for his delay in filing the afore-referenced request for relief.

Insofar as plaintiff's request to file a late notice of appeal, Fed. R. App. P. 4(a)(5)(A) states that a district court may extend the time to file a notice of appeal if a party so moves no later than 30 days after expiration of the time period for filing a notice of appeal and the party shows excusable neglect or good cause. The judgment was entered in this case on September 16, 2008, and plaintiff filed the present motion for an extension of time to file an appeal on October 17, 2008, well within the time period set forth in Fed. R. App. P. 4(a)(5)(A). As a further matter, plaintiff's motion papers indicate that he suffered an injury to his arm, was denied access to his

lawyer and/or a law library and had his legal materials confiscated by prison officials. In light of these allegations and plaintiffs' compliance with the time period afforded by Fed. R. App. P. 4(a)(5)(A), the Court may grant his request for an extension of time within which to file a Notice of Appeal.

WHEREFORE it is hereby

ORDERED that plaintiff's motion for an extension of time to file objections to the Report and Recommendation of the Magistrate Judge is DENIED; and it is further

ORDERED that plaintiff's motion pursuant to Fed. R. Civ. P. 59(e) is DENIED; and it is further

ORDERED that plaintiff's motion for an extension of time within which to file an appeal pursuant to Fed. R. App. P. 4(a)(5) is GRANTED; and it is further

ORDERED that plaintiff is required to file his Notice of Appeal within ten (10) days of the date of this Order pursuant to Fed. R. App. P. 4(a)(5)(C).

**IT IS SO ORDERED.**

Dated: February 10, 2009  
Syracuse, New York

  
Norman A. Mordue  
Chief United States District Court Judge